LEVINE, BLASZAK, BLOCK & BOOTHBY
1300 CONNECTICUT AVENUE, NW
SUITE 500
WASHINGTON, D.C. 20036-1703
(202) 223-4980
FAX (202) 223-0833

EX PARTE OR LATE FILED

JUN 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

ORIGINAL

June 19, 1996

William F. Caton
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington D.C. 20554

Re: *Ex parte* presentation in CC Docket No. 96-61, Part II
Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended

Dear Mr. Caton:

This *ex parte* presentation is submitted on behalf of the users of interstate telecommunications services, and associations of such users, identified below. We are filing to refute allegations made by Sprint Corporation in its Reply Comments in the above-captioned proceeding as to accuracy of our representations concerning carrier practices. Sprint has declined our informal invitation to reconsider its pleading, and we feel compelled to supplement the record so that the Commission is not misled about these matters.

Our Comments observed that large customers typically negotiate contracts for the services they obtain from interexchange carriers ("IXCs"). The IXCs, including Sprint, file customer-specific tariffs to reflect these negotiated arrangements. With the exception of AT&T's Tariff F.C.C. No. 12, customer-specific tariffs both set out price and certain other terms, and cross-reference each carrier's generic tariffs for all matters not addressed in the customer-specific provisions. The generic tariffs in turn are designed to govern the carriers' arrangements with all customers, notably those who do not negotiate the prices, terms and conditions on which they will take service.

We noted in our Comments that the carriers often amend their generic tariffs "without first securing the consent of (or even giving notice to). . . customers who may be affected by the changes". Ad Hoc, *et al* Comments, p. 5. Our Comments urged the Commission to adopt a mandatory de-tariffing

requirement for non-dominant carriers in order to protect customers from changes in generic tariffs that modify or abrogate negotiated terms.

In its Reply Comments, Sprint disputes our description of the negotiation and tariff filing practices of the IXCs and, in particular, of Sprint's practices. Sprint states that we "speculate without any foundation" that the March 1995 filing in which Sprint tariffed its previously negotiated contracts contradicted prior agreements with its customers. Sprint also claims that we must be "incorrect" about inconsistencies between Sprint's tariffs and contracts, because "the individual option would specify any material term or condition that was inconsistent with a general term and condition." No other IXC disputed our Comments on this (or any other) factual issue

It is important that the Commission have an accurate and complete record in this proceeding. In this instance, however, the confidentiality requirements that typically govern negotiated service agreements complicate efforts to provide the Commission with actual contract provisions illustrating the phenomenon described in our pleading. We have given Sprint copies of the contracts entered into by it that conclusively prove our point and demonstrate that our Comments were neither speculative nor incorrect. Sprint has not disputed what is evident on the face of these documents. Sprint is, of course, free to take the steps necessary to share the relevant materials with the Commission so the Commission may make its own judgment on the matter.[1]

We are not accusing Sprint of deliberately filing tariff provisions that are inconsistent with the contracts it has negotiated. We recognize that inconsistencies can arise through inadvertence, rather than a deliberate attempt to violate § 203 of the Communications Act. Indeed, our experience has been that Sprint will (eventually) revise its tariffs to reflect the negotiated agreement if an inconsistency is brought to its attention. In fact, Sprint's tariff specifically invites customers to identify errors, and promises to make revisions as needed. But it serves no legitimate public policy for the Commission to preserve a regulatory regime that requires a customer to analyze carrier tariffs (a complicated exercise for which most customers are unprepared) in order to ensure that the contract the customer has negotiated is enforceable.

---

[1] Because our Comments were carefully crafted to avoid violating such requirements, Sprint would have been corrrect to state that we failed to support our claim by supplying the Commission with specific examples. It is flatly untrue, however, that our claim is "speculative" or "incorrect". Sprint cannot insist on that characterization when it has in hand strong evidence to the contrary but chooses not to release it to the Commission.

The point made in our Comments -- that the very existence of tariffs creates risks for any customer who expects to receive service on the terms it has negotiated -- still stands. As if to underscore that point, MCI recently modified the generic tariff applicable to all Special Customer Arrangements ("SCAs") to impose a surcharge "on all charges for outbound service originating at, or inbound service terminating at, addresses in states which levy, or assert a claim of right to levy: (i) a gross receipts tax on MCI's operations in any such state; or (ii) a tax on interstate access charges incurred by MCI for access to telephone exchanges in that state; or (iii) an ad valorem tax on MCI's interstate property located in that state." MCI Tariff F.C.C. No. 1, Section B-7.08 (effective April 1, 1996). The last clause of this revision has the effect of shifting certain obligations from MCI to its customers in a manner that flatly contradicts the negotiated terms of contracts that MCI has entered into with large users of telecommunications services. MCI has not secured the consent of all SCA customers to this tariff change.[2]

The practices described above are not unique to Sprint or MCI. They are the product of a regulatory regime that is wholly at odds with the way carriers and their customers should be doing business in a competitive environment. We urge the Commission to remedy this problem by eliminating the carriers' unilateral right to file tariffs that modify or abrogate their negotiated service arrangements.

Sincerely,

Ellen G. Block

Counsel for the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association, ABB Business Services, Inc. and The Prudential Insurance Co. of America

200.04\forbexp2.doc

---

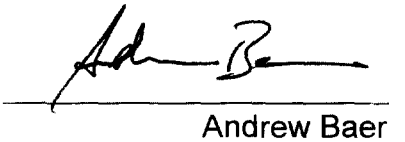
[2] We leave for another day whether it is reasonable for a carrier to impose such a surcharge where the state does not actually levy the tax but merely "assert[s] a claim of right" to do so.

Certificate of Service

I, Andrew Baer, hereby certify that true and correct copies of the preceding Ex Parte Letter regarding CC Docket Number 96-61, Part II, In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, were served this 19th day of June, 1996, via first class mail, upon the parties on the attached service list, and via hand delivery of the following:

Janice Myles*
Common Carrier Bureau
1919 M Street, NW
Room 544
Washington DC 20554

ITS, Inc.*
2100 M Street, NW
Suite 140
Washington DC, 20037



Andrew Baer

June 19, 1996

200.04\forexser.doc